UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA

Jason K. Fisher, Plaintiff, **v.** **Flint Hills Resources Pine Bend, LLC**; **Koch Industries, Inc**.; **Flint Hills Resources, LP**; and **Koch Business Solutions, Inc**., Defendants.	Court File No.____________ Case Type: Employment **COMPLAINT** **(JURY TRIAL DEMANDED)**

INTRODUCTION

1. Plaintiff Jason Fisher, by his attorney Tyler W. Brennan Law, LLC, brings this action for damages and other legal and equitable relief, stating the following as his claims against Defendant Flint Hills Resources Pine Bend, LLC *et al*. ("Defendants"):

PARTIES

2. Plaintiff is an individual who resides in Minneapolis, Minnesota.

3. Defendant Flint Hills Resources Pine Bend, LLC ("Flint Hills") is a foreign limited liability corporation with a registered address of 1010 Dale Street North, Saint Paul, Minnesota 55117.

4. Defendant Koch Industries, Inc. ("Koch Industries") is a domestic business corporation with a registered address of 151 Cheshire Lane, Plymouth, Minnesota 55441.

5. Defendant Flint Hills Resources, LP ("Flint Hills LP") is a foreign limited partnership with a registered address of 1010 Dale Street North, Saint Paul, Minnesota 55117.

6. Defendant Koch Business Solutions, LP ("Koch Business") is a foreign corporation with a registered address of 112 Southwest 7th Street, Suite 3C, Topeka, Kansas 66603.

7. Defendants, collectively referred to as "Flint Hills" or "Defendants," conducted business from a place of business at 12555 Clark Road, Rosemount, MN 55068.

8. At all times relevant hereto, Plaintiff was Defendants' "employee" within the meaning of 42 U.S.C. § 12111(4), 29 U.S.C. § 2611(2), and Minn. Stat. § 363A.03, and Defendants were Plaintiff's "employer" within the meaning of 42 U.S.C. § 12111(5), 29 U.S.C. § 2611(4) and Minn. Stat. § 363A.03.

JURISDICTION AND VENUE

1. This Court has original jurisdiction to hear this Complaint and to adjudicate the claims stated herein under 28 U.S.C. § 1331, this action being brought under the Americans with Disabilities Act, 42 U.S.C. § 12101, *et seq.* ("ADA").

2. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 to adjudicate Plaintiff's claims under the Minnesota Human Rights Act, Minn. Stat. § 363A.01 *et seq.* ("MHRA").

3. Venue is proper under 28 U.S.C. § 1391, because the unlawful practices described herein were committed in the District of Minnesota.

FACTUAL BACKGROUND

4. In or around February 2010, Flint Hills hired Plaintiff to work as an Operator-Helper in its Rosemount location. The Operator-Helper position was provisional and lasted for a period of six months.

5. In or around November, 2010, Flint Hills promoted Plaintiff to the position of Operator-II.

6. Flint Hills utilizes a bidding system for job candidates seeking new positions within the company.

7. Under Flint Hills' bidding system, candidates with the necessary qualifications may apply for open positions and are chosen based on those qualifications and seniority.

8. Once an applicant has been accepted, Flint Hills utilizes a training program by which the applicant is provided one-on-one training, mentorship, and other tools to successfully transition into the new role.

9. In early 2014, Flint Hills posted a job opening for the position of Laboratory Shift Analyst ("Lab Analyst").

10. Subsequently, Plaintiff applied ("bid") for the Lab Analyst position.

11. In July 2014, Plaintiff's bid was accepted.

12. In order to complete training and become qualified as a Lab Analyst, Plaintiff was required to undergo period of job shadowing to learn about the position, pass a written exam, complete 21 separate tests, undergo an observation phase, and obtain approval from a reviewing board.

13. Plaintiff was assigned a trainer, Jerry Mealman ("Mealman"), who was a chemist and responsible for training several of the other Lab Analysts.

14. Flint Hills' policy expressly states that "[Flint Hills] …does not require you to become qualified by a certain date…. The amount of time it takes to qualify varies from individual to individual because we all learn at different paces. Most individuals will qualify within a year…. If you are having difficulty learning or grasping concepts, you, you're Trainer, Supervisor and Training Department will discuss how to best proceed."

15. On November 15, 2014, Plaintiff was severely injured at work when an overhead chain snapped and fell on Plaintiff. Plaintiff was rushed to the emergency room and surgery was performed. Due to the extent and severity of Plaintiff's injuries, Plaintiff was unable to work for several months.

16. As a result of Plaintiff's injury, Plaintiff has a physical disability which interferes with his ability to perform various tasks such as climbing stairs and ladders, crawling on his hands and knees, walking, and standing for extended periods of time.

17. Notwithstanding these limitations, Plaintiff returned to work on May 7, 2017 and continued his training for the Lab Analyst position.

18. On October 1 2015, Plaintiff passed his written examination.

19. Upon information and belief, Plaintiff was one of the few individuals to pass his written exam on the first try.

20. Following the written exam, Plaintiff began experiencing adverse treatment from his supervisor, Holly McCracken ("McCracken").

21. For instance, shortly after passing the written exam, Mealman, who had been supervising Plaintiff's training, was removed as Plaintiff's trainer. Plaintiff was provided no explanation other than that Mealman was no longer permitted to train Plaintiff.

22. Plaintiff was not provided with another trainer.

23. Instead of replacing Plaintiff with another chemist, McCracken began supervising Plaintiff's training.

24. McCracken was not a chemist and therefore did not possess the qualifications necessary to train Plaintiff.

25. In addition, and in an effort to delay Plaintiff's progress, McCracken also required another individual, Erin Collins ("Collins"), to be present for Plaintiff's testing. Collins, like McCracken, was not a chemist.

26. Upon information and belief, only Plaintiff was required to perform tests in the presence of two supervisors.

27. McCracken required both her and Collins to be present for Plaintiff's testing which substantially hindered Plaintiff's speed of training. If either McCracken or Collins were unavailable, Plaintiff was not able to complete his tests.

28. In early January 2016, as Plaintiff neared the completion of his training, McCracken began arbitrarily failing Plaintiff on tests.

29. When Plaintiff asked for information regarding this treatment, McCracken informed Plaintiff that he would not be qualified and even if he did complete his tests he would be failed by the reviewing board, which McCracken was a part of.

30. At one point in late January, 2016, McCracken requested a one-on-one meeting with Plaintiff. Fearing reprimand or retaliation, Plaintiff attempted to exercise his Weingarten rights by requesting that a representative be present for the meeting. McCracken opposed the request and attempted to reprimand Plaintiff regardless.

31. Shortly thereafter, Plaintiff was informed that he was being demoted back to his original position as an Operator-Helper. Plaintiff was then forced on leave unless and until Plaintiff's physician changed his restrictions.

32. In April 2016, Plaintiff requested reasonable accommodations.

33. Flint Hills failed to engage in an interactive process. Instead, Flint Hills provided Plaintiff with a letter dated April 7, 2016 which simply denied Plaintiff's request for accommodations. Flint Hills did not propose any alternatives.

34. Flint Hills also failed to follow its own rules and procedures with regard to Plaintiff's training, thereby depriving Plaintiff of the opportunity to work as a Lab Analyst, a position for which he was qualified.

35. Upon information and belief, Flint Hills did not take any of these actions against any of the other Lab Analysts, several of whom were also previously Operators, who were not disabled.

36. On or about November 15, 2016, Plaintiff filed a Charge of Discrimination with the Equal Employment Opportunity Commission ("EEOC").

37. Shortly thereafter, Plaintiff received the Right to Sue from the EEOC, dated December 9, 2016.

CAUSES OF ACTION

COUNT 1
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, *et seq.*
(DISABILITY DISCRIMINATION)

38. Plaintiff re-alleges and incorporates each of the preceding paragraphs by reference.

39. The Americans with Disabilities Act ("ADA") provides that it is an unlawful employment practice to "discriminate against a qualified individual on the basis of a disability in regard to job application procedures, the hiring, advancement, or discharge of employees, employee compensation, job training, and other terms, conditions, and privileges of employment." 42 U.S.C. § 12112(a).

40. The ADA defines a "disability" as: (A) a physical or mental impairment that substantially limits one or more major life activities of such individual; (B) a record of such an impairment; or (C) being regarded as having such an impairment…42 U.S.C. § 12102(1).

41. The ADA mandates the definition of disability to be construed in favor of broad coverage of individuals under this chapter, to the maximum extent permitted by the terms of this chapter." 42 U.S.C. § 12102(4)(A).

42. Major life activities include, but are not limited to, "caring for oneself, performing manual tasks, seeing, hearing, eating, sleeping, walking, standing, lifting, bending, speaking, breathing, learning, reading, concentrating, thinking, communicating, and working." 42 U.S.C. § 12102(2)(A).

43. Plaintiff suffered from an impairment that substantially limited one or more major life activities, and Plaintiff has a record of such impairment.

44. Defendants received documentation from such impairment from Plaintiff and were otherwise aware of Plaintiff's disability.

45. Defendants' conduct herein identified violates 42 U.S.C. § 12112(a).

46. As a result of Defendants' conduct in direct violation of the ADA, Plaintiff has suffered loss of past and future income, mental anguish, emotional distress, and other damages in an amount in excess of $75,000.00.

47. Defendants committed the above-alleged facts with malice, reckless disregard, or deliberate disregard for the rights of the Plaintiff. As a result thereof, Plaintiff is entitled to an award of punitive damages.

COUNT II
VIOLATION OF THE AMERICANS WITH DISABILITIES ACT
42 U.S.C. § 12101, *et seq.*
(FAILURE TO ACCOMMODATE)

48. Plaintiff re-alleges and incorporates each of the preceding paragraphs by reference.

49. The ADA provides that discrimination includes the failure to make reasonable accommodations for the individual's disability. 42 U.S.C. § 12112(b)(5)(a). Reasonable accommodations include acquisition or modification of equipment or devices, appropriate adjustment or modification of examinations, training materials or policies…and other similar accommodations for individuals with disabilities. 42 U.S.C. § 12111(9)(b).

50. Plaintiff notified Defendants of his medical conditions and requested reasonable accommodations.

51. Defendants failed to reasonably accommodate Plaintiff's known disability, and instead reprimanded Plaintiff, demoted him, and ultimately forced Plaintiff on leave, as a result of Plaintiff's disability.

52. Defendants' conduct identified herein is discriminatory under 42 U.S.C. § 12112(b)(5)(a), and therefore violates 42 U.S.C. § 12112(a).

53. As a result of Defendants' conduct, Plaintiff has suffered loss of past and future income, mental anguish, emotional distress, and other damages in an amount in excess of $75,000.00.

54. Defendants committed the above-alleged facts with malice, reckless disregard, or deliberate disregard for the rights of the Plaintiff. As a result thereof, Plaintiff is entitled to an award of punitive damages.

COUNT III
VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT
Minn. Stat. § 363A.01, *et seq.*
(DISABILITY DISCRIMINATION)

55. Plaintiff re-alleges and incorporates each of the preceding paragraphs by reference.

56. Minn. Stat. § 363A.08 of the Minnesota Human Rights Act provides that it is an unlawful employment practice for an employer to discharge or discriminate against any individual with respect to the compensation, terms, conditions, or privileges of employment, because of such individual's disability. A disability under Minn. Stat. § 363A.03(12) is "any condition or characteristic that renders a person a disabled person. A disabled person is any person who (1) has a physical, sensory, or mental impairment which materially limits one or more major life activities; (2) has a record of such impairment; or (3) is regarded as having such an impairment."

57. Defendants' conduct herein violated Minn. Stat. § 363A.08.

58. As a result of Defendants' conduct in direct violation of the MHRA, Plaintiff has suffered loss of past and future income, mental anguish, emotional distress, and other damages in an amount in excess of $75,000.00.

59. Defendants committed the above-alleged facts with malice, reckless disregard, or deliberate disregard for the rights of the Plaintiff. As a result thereof, Plaintiff is entitled to an award of punitive damages.

COUNT IV
VIOLATION OF THE MINNESOTA HUMAN RIGHTS ACT
Minn. Stat. § 363A.01, *et seq.*
(FAILURE TO ACCOMMODATE)

60. Plaintiff re-alleges and incorporates each of the preceding paragraphs by reference.

61. Minn. Stat. § 363A.08, subd. 6, makes it an unfair employment practice for an employer "not to make reasonable accommodations to the known disability of a qualified

person…unless the employer…can demonstrate that the accommodation would impose an undue hardship on the business."

62. Plaintiff suffers from an impairment that substantially and materially limits one or more major life activities and has a record of such impairment.

63. Defendants failed to reasonably accommodate Plaintiff's known disability.

64. The conduct described herein violates Minn. Stat. § 363A.08 of the Minnesota Human Rights Act.

65. As a result of Defendants' conduct in direct violation of the MHRA, Plaintiff has suffered loss of past and future income, mental anguish, emotional distress, and other damages in an amount in excess of $75,000.00.

66. Defendants committed the above-alleged facts with malice, reckless disregard, or deliberate disregard for the rights of the Plaintiff. As a result thereof, Plaintiff is entitled to an award of punitive damages.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jason K. Fisher asks for a judgment against Defendants Flint Hills Resources Pine Bend, LLC, Koch Industries, Inc., Flint Hills Resources, LP, and Koch Business Solutions, LP (collectively, "Defendants") as follows:

1. That the practices of Defendants complained of herein be determined and adjudged to constitute disability discrimination and failure to accommodate in direct violation of the ADA, 42 U.S.C. § 12101, *et seq.*, and Minn. Stat. § 363A.01, *et seq.;*

2. That Plaintiff be awarded all relief available under the ADA, 42 U.S.C. § 12101, *et seq.*, and the MHRA, Minn. Stat. § 363A.01, *et seq.*, including punitive damages;

3. That Plaintiff be awarded compensatory damages for mental anguish and emotional distress in an amount in excess of $75,000.00;

4. That Plaintiff be awarded attorney's fees, penalties, and the costs of this action;

5. For a civil penalty against Defendants pursuant to Minn. Stat. § 363A.01, *et seq.*;

6. For such other relief as this Court deems just and equitable.

PLAINTIFF DEMANDS A JURY TRIAL.

Dated this 6th day of March, 2017.

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